
(1999) 03 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Criminal Rev. No's. 3 to 7 and 12 of 1987

Sushil Kumar Khajuria and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Citation : (2000) CriLJ 682 : (2003) 3 JKJ 168

Hon'ble Judges : O.P. Sharma, J;A.M. Mir, J

Bench : Division Bench

Advocate : J.P. Singh and V.R. Wazir, for the Appellant; Aslam Goni, A.G. and K.N. Bhat, for the Respondent

Judgement

A.M. Mir, J.—This bunch of revision petitions has landed into this Bench by virtue of an order of reference made by a learned Single Bench

of this Court on 24.8.1998. The question raised through the medium of these petitions is, as to whether or not C.B.I. Organisation is within its

powers to investigate an offence in the State of Jammu & Kashmir and produce a challan before a criminal Court of competent jurisdiction.

2. The revision petitioners are public servants. C.B.I. registered cases against them, conducted investigation and finally produced challans. In Cr.

Rev. Petition No. 89, the Additional Sessional Judge Jammu charged the accused for offences under Sections 120-B, 420, 467, and 468/471-

RPC vide an order dated 21.12.1982 and in rest of the revision petitions accused was charge-sheeted by the Chief Judicial Magistrate Jammu u/s

409-RPC on 9.12.1986.

3. Interestingly for the last twelve years these revision petitions have only adorned the over-burdened shelves of this Court. As the whole record

has been called by this Court, therefore, the proceedings before the Trial Court have all long remained stayed. The petitioners have succeeded in their attempt to get the trials fore-stalled.

4. The whole thrust of the argument advanced on behalf of the petitioners is that an F.I.R. can be lodged only before an officer incharge of a Police

Station. It is that officer incharge police Station who will reduce into writing the report lodged before him. Registration of the case also relates to

the entry of such report in a book to be kept by the same officer. Much emphasis has been laid on the terms "'Officer Incharge of Police Station

and "'Police Station"' as defined u/s 3(1) & (e) of the Code. It is contended that "'Police Station"' means any post or place declared by the State

Government to be a police station. According to learned counsel appearing for the petitioners, a police station has to be a house or a post

physically identifiable. Same cannot be in air. The State Government has conceded that no specific place or post has been declared for the

purpose of investigation by C.B.I. to be a police station.

5. Similarly, it has been hotly argued that 'Officer Incharge Police station' would mean an officer manning a particular police station as the

personification of an officer and the identification of a particular post or place, are both conditions precedent for filing an F.I.R. or registration of a

case. It is pleaded that there in the present case, neither a police station is in existence nor any officer is declared to function as its officer incharge.

Therefore, registration of cases against the petitioners is no registration. Whole exercise of investigation, according to the learned counsel for the

petitioners, is conducted by people who are not authorised to do it. Consequently it has also been pleaded that Sub-section (2)(i) of Section 173-

Cr. P.C. contemplates that on completion of investigations it is the officer Incharge of the police station who shall forward the challan to the

Magistrate empowered to take cognizance of the offence.

6. An assiduous but unsuccessful attempt has been made to bifurcate the production of the case in terms of Section 173 Cr. P.C. and the

investigation conducted on the strength of an F.I.R. lodged in terms of Section 154-Cr. P.C.

7. Mr. J.C. Singh, appearing for the petitioners, tried to convince us that the act of production of challan should at least have been performed by a

duly appointed Station House Officer of a police station.

8. The question raised in these revision petitions stands already answered. Central Bureau of Investigation (C.B.I.) constituted under the Delhi

Special Police Establishment Act, 1946, can conduct investigations in the state of Jammu and Kashmir. Said Act is applicable to whole of India,

including Jammu & Kashmir. u/s 5 of the Delhi Special Police Establishment Act, 1946 (hereinafter called the Act), the Central Government is

empowered to extend this Act to any area for including State of Jammu & Kashmir. There is no dispute on the point that the Act has been

extended to the State of Jammu & Kashmir and the offences under which the petitioners have been charged fall within the ambit of the Notification

issued in terms of Section 3 of the Act.

As far back as in April, 1969 a Division Bench of this Court, comprising of Syed Murtaza Fezl Ali, C.J. and Jaswant Singh J. (as their Lordships

then were) had an occasion to determine the vires of the Act and also its applicability to Jammu & Kashmir. Their Lordships while deciding Cr.

Reference titled Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, In addition to upholding the vires of Sections 5 & 6 also upheld

the extension of the Act to the State of Jammu & Kashmir.

9. Subsequently in Cr. Reference No. 93/1978 titled *Ld. Col. H.N. Tirpathi v. State* 1987 KLJ 499 His Lordship, Dr. A.S. Anand C.J. (as His

Lordship then was) very eloquently refuted the contention of non-competence of registration of a case or investigation of cases in the State of J&K

by the C.B.I. His Lordship relied upon *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, and the judgment of the Division Bench we have

referred to above (1972 JKL 252) . His Lordship while commenting upon Sections 5 & 6 of the Act dealt with Section 3 also. After coming to

the conclusion that the offence in which the accused in that case was tried, would find place in the Notification u/s 3, His Lordship held as under:

It is, therefore, futile to contend that the officers of the Delhi SPE and the CBI have no jurisdiction of investigate the cases under the P.C. Act and

to file a final report. The mere fact that an accused belongs to the Indian Armed Forces, in view of the aforesaid discussion would make no

difference so long as the offence alleged to be committed by him falls within the scope and purview of the offences punishable under the P.C. Act

and the Ranbir Penal Code.

10. Before us a reference has been made to R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others, . These judgments relate to the

general powers of investigation of police officers independent any territorial upon these judgments as we have direct law on the point.

11. After finding that the Act is applicable to the State of Jammu & Kashmir, we will have to see whether the notification issued in terms of Section

3 includes the offences under which the petitioners have been charged. Notification No. 25/3/60-AVD(II) dated 1.4.1964 includes offences

punishable under Sections 420, 467, 468/471 and 409-RPC.

12. u/s 6 of the Act any member of the Delhi Special Establishment has been empowered to exercise powers and jurisdiction in any area of the

State. The only requirement is that of the State Government, giving its consent to such exercise of powers. The Government of J&K has granted its

consent to exercise of such powers by the members of Special Police in the State of J&K. Therefore, it will be futile to imagine that C.B.I. has no

jurisdiction to register cases and investigate them. Investigation must include presentation of challans before the criminal court of competent

jurisdiction also.

13. We accordingly find no merit in these revision petitions and dismiss the same. We direct the Registry to lose no time in sending back the record

to the trial Courts for a speedy trial hereafter. We also direct the Trial Courts to proceed ahead with the trials, in as far as possible, on day-today

basis and complete them expeditiously.

O.P. Sharma, J.

I entirely agree with my brother Mir that all these petitions are liable to be dismissed as the question involved is no longer res integra for this Court.

However, I wish to add the following:

The expression ""Police station"" is defined u/s 4(1) (o) of the Code of Criminal Procedure. 1989 (1931 AD) (for short the Code hereafter). It

reads:-

4. Definitions. -- (1) in this Code the following words and expressions have the following meaning unless a different intention appears from the

subject or context:

(o) "Police station".- "Police station" means any post or place declared, generally or specially, by (the Government) to be a police station, and

includes any local area specified by (the Government) in this behalf;

It is not disputed that the State Government has notified a number of Police stations for in the State and an Officer Incharge of a Police station

exercises powers under the Code only within the jurisdiction of the police station he is made Incharge. The expression 'Officer Police incharge of

Police station is also defined in Section 4(1)(l) of the Code. It reads:-

Officer-incharge of Police station",--

Officer-incharge of a police station" includes, when the officer-in-charge of the police station is absent from the station house or unable from illness

or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of

constable or, when (the Government) so direct, any other police officer so present.

The argument by Mr. Singh is that the Government having not declared any place to be a police station in which the cases to be investigated by the

members of Delhi Special Police Establishment are to be registered, the police report submitted u/s 173 of the Code is without jurisdiction. The

power to investigate, argued Mr. Singh, does not include the power to prosecute the offender by filing a report or charge-sheet u/s 173 of the

Code. In support of this, he placed reliance on the decision of the Apex Court in Raj Kumar Karwal Vs. Union of India and others, . But since the

facts in Raj Karwal's case (supra) were entirely different, the authority is distinguishable, as is evident from para 1 of the judgment which reads as

under:

Are the officers of the Department of Revenue Intelligence (DRI) who have been invested with the powers of an officer-incharge of a police

station u/s 53 of Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called 'the Act'), "Police Officers" within the meaning of

Section 25 of the Evidence Act? If yes, is a confessional statement recorded by such officer in the course of investigation of a person accused of

an offence under the said Act, admissible in evidence as against him?

This was answered as follows:

.....The important attribute of police power is not only the power to investigate into the commission of cognizable offence but also the power to

prosecute the offender by filing a report or a charge-sheet u/s 173 of the Code. That is why this court has since the decision in *Badku Joti Savant*

Vs. State of Mysore, accepted the ratio that unless an officer is invested under any special law with the powers of investigation under the Code,

including the power to submit a report u/s 173, he cannot be described to be a 'Police officer' u/s 25. Evidence Act. Counsel for the appellants,

however, argued that since the Act does not prescribe the procedure for investigation, the officers invested with power u/s 53 of the Act must

necessarily resort to the procedure under Chapter XII of the Code which would require them to culminate the investigation by submitting a report

u/s 173 of the Code. Attractive though the submission appears at first blush it cannot stand close scrutiny. In the first place as pointed out earlier

there is nothing in the provisions of the Act to show that the Legislature desired to vest in the officers appointed u/s 53 of the Act, all the powers of

Chapter XII, including the power to submit a report u/s 173 of the Code But the issue is placed beyond the pale of doubt by Sub-section (1) of

Section 36A of the Act which begins with a non obstante clause notwithstanding anything contained in the Code and proceeds to say in Clause (d)

as under:

36-A(d): A Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an

officer of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being

committed to it for trial.

This Clause (s) of Section 36A(1) makes it clear that if the investigation is conducted by the police, it would conclude in a police report but if the

investigation is made by an officer of any other department including the DRI, the Special Court would take cognizance of the offence upon a

formal complaint made by such authorised officer of the concerned Government. Needless to say that such a complaint would have to be u/s 190

of the Code. This clause, in our view, clinches the matter. We must, therefore, negative the contention that an officer appointed u/s 56 of the Act,

other than a police Officer, is entitled to exercise all the powers under Chapter

XII of the Code, including the power to submit a report on charge sheet u/s 173 of the Code.....

The ratio decidendi of the judgment is that:

the officers of the Department of Revenue Intelligence though empowered u/s 53 of NDPS Act as officers-in-charge of Police station are not

Police officers within the meaning of Section 25 of the Evidence Act; and

the role of such officers affecting arrest or seizure, except in case of Police officers, ends with the disposal of the person arrested and the article

seized in the manner provided by Sections 52 and 52A of the NDPS Act.

However, while the questions raised in these petitions were already concluded by a catena of authorities of this court the matter has now been

completely set at rest by the law laid down in K. Chandrasekhar Vs. The State of Kerala and Others, , holding as follows:

The Act was enacted to constitute a Special Police Force in Delhi for the investigation of certain offences in the Union territories and to make

provisions for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of the

members of the said force in regard to the investigation of the said offences. Section 2 of the Act entitles the Central Government to constitute such

a police force, notwithstanding anything in the Police Act, 1861, to be called the Delhi Special Police Establishment, for the investigation of

offences notified u/s 3. The members of the said establishment of or above the rank of Sub Inspector are empowered, subject to any order which

the Central Government may make in this behalf, to exercise any of the powers of the Officer-in-charge of the police station in the area in which he

is for the time being, and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of

police station discharging the functions of such officer within the limits of his station. Section 3 empowers the Central Government to specify the

offence or offences or classes of offences which are to be investigated by the Delhi Special Police Establishment i.e. C.B.I by issuing notification in

the Official Gazette. u/s 5, the Central Government can extend the powers of Delhi Special Police Establishment to any other part of the country

for the investigation of any offences or classes of offences specified in a notification issued u/s 3. Once such an order is made under Sub-section

(1) of Section 5, the members of the establishment shall be deemed to be the members of the Police force of the extended area and will be vested

with powers, functions and privileges and be subject to the liabilities of a Police officer belonging to that Police force. Under Sub-section (3)

thereof, the members of the Delhi Special Police Establishment of or above the rank of Sub Inspector shall also be deemed to be an officer-in-

charge of that extended area while exercising such powers. However, in view of Section 6 the powers and jurisdiction conferred u/s 5 can be

exercised in the extended area only with the consent of the Government concerned.

This is a complete answer to all the grounds of challenge against the prosecution of the petitioners. Moreover, the basic object of Section 5(3) to

designating members of the Delhi Special Police Establishment as officers-in-charge of Police station is to enable them to discharge the functions of

such post under the Code which otherwise be cannot. These powers, as observed in Karwal's case (supra) are:

The power to investigate is to be found in Chapter XIV of the Code which begins with Section 154 and ends with Section 176. The scheme of

this Chapter is that the law can be set in motion in regard to a cognizable offence on receipt of information, written or oral, by the officer-in-charge

of a police station. Once such information is received and registered. Section 156 empowers any Officer-in-charge of the Police station to

investigate the same without any magisterial order. The investigation which so commences must be concluded, without unnecessary delay, by the

submission of a report u/s 173 of the Code to the concerned Magistrate in the prescribed form

So he can register case, investigate it and file police report u/s 173 of the Code, as laid down by a Bench of this court in State v. Rup Lal 1972

J&K 252 holding as follows:

.....The learned counsel for the accused has not been able to show that any order which may be said to be inconsistent with the Code of Criminal

Procedure of the State has been issued by the Central Government. He has also not been able to point out any substantial variation from the

normal procedure in regard to the investigation of offences specified u/s 3 of the Act which can be said to imperil the chances of fair and impartial

investigation. Further more, according to Section 5(1) of the Code of Criminal Procedure of the State also the investigation by a member of Delhi

Special Police Establishment into offences under the Ranbir Penal Code has to be carried on in accordance with the Code of Criminal Procedure

of the State. Thus, by a combined operation of Sections 5 and 6 of the Delhi Special Police Establishment Act and Section 5(1) of the Criminal

Procedure Code of the State, a member of Delhi Special Police Establishment while performing his functions and exercising his powers with

respect to this State becomes subject to the Code of Criminal Procedure of our State, and has to carry on the investigation in accordance with

procedure prescribed by the Code. That apart as held in AIR 1967 SC 1266 no person has a vested right in procedure. It may also be mentioned

that Section 21 of the Police Act which has been cited by the learned counsel for the accused in support of his contention has very little bearing on

the matter.

We are, therefore, unable to appreciate as to how the Delhi Special Police Establishment Act can be said to impinge on the Code of Criminal

Procedure of the State. The objection, therefore, that the Act is void on the ground of its being repugnant to the Code of Criminal Procedure of the

State cannot be upheld and is over ruled.

So it can be safely held that the power of an officer of the Delhi Police Establishment acting in any area do not extend only to investigation of

offences specified in Section 3, but also include the filing of charge-sheet or report of police officer within the meaning of Section 173 of the Code.

So the argument that power to investigate does not include power to file police report u/s 173, is without any merit and is rejected accordingly. It is

equally fallacious to contend that the power of a member of the Delhi Special Police Establishment investigating a case as Officer-in-charge police

station is dependent upon registration of the case in a police station within whose jurisdiction the offence is alleged to have been committed. Not

otherwise. This is so, because Section 154 of the Code prescribes the procedure for taking cognizance and investigation. It reads:

154. Information in cognizable cases. -

(1) Every information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station, shall be reduced

to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to

writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such

form as (the Government) may prescribe in this behalf).

The requirement of the section is two-fold: one that the information must be reduced into writing; and two, it must be entered in a book to be kept

by the officer in such form as the Government may prescribe. There is no challenge that the First Information Report in these cases has not been

reduced into writing in the book or in the form prescribed by the Government. The section casts this obligation on the Officer-in-charge of a Police

station only and goes no further.

So under law the book in which the First Information Report is to be registered has to be kept by the Officer-in-charge of the Police station. It is

the admitted case of the petitioner that such report is registered in the office of Superintendent of Police, Central Bureau of Investigation,

established in the State. This neither offends the definition of "Police station" nor contravenes Section 154 of the Code, which requires the

information to be reduced into writing by an Officer-in-charge of a Police station and not in the Police station. Since the jurisdiction of a member of

Delhi Special Police Establishment exercising powers of the Officer-in-charge of a Police station in the State of Jammu & Kashmir extends to the

whole of the State, therefore, it is not necessary to declare any place to be a police station for the purposes of investigation of cases u/s 3 of the

Act. These powers are exercisable by virtue of his position as an Officer-in-charge of a Police station and not with reference to any place which

has been declared to be a Police station.